

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER B: PROVISIONS APPLICABLE TO MORE
THAN ONE KIND OF UTILITY

PART 340
MONEY POOL AGREEMENTS

Section

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AUTHORITY: Implementing Sections 7-101 and 7-102 and authorized by Section 10-101 the Public Utilities Act [220 ILCS 5/7-101, 7-102, and 10-101].

SOURCE: Adopted at ___ Ill. Reg. _____, effective _____.

Section 340.10 Applicability

- a) This Part shall apply to public utilities as defined in Section 3-105 of the Illinois Public Utilities Act (Act) [220 ILCS 5/3-105] and incumbent local exchange carriers that provide noncompetitive services as defined in Section 13-202.5 of the Act [220 ILCS 5/13-202.5], but shall exclude local exchange telecommunications carriers with no more than 35,000 subscriber access lines pursuant to Section 13-504(d) of the Act [220 ILCS 5/13-504(d)].
- b) This Part shall apply to any agreement that provides a mechanism for borrowing or lending monies among affiliates, except:
 - 1) Routine bank transactions as defined in 83 Ill. Adm. Code 105.10;
 - 2) Cash management and treasury services whereby funds are not transferred, loaned or advanced;
 - 3) Loans between affiliates and utilities that have original terms to maturity greater than one year; and
 - 4) Incumbent local exchange carriers are not subject to the requirements of Section 340.30 pursuant to Section 13-601 of the Act [220 ILCS 5/13-601].
 - 5) Utilities that do not issue long-term debt to unaffiliated third parties are not subject to the requirements of Section 340.30 or Section 340.40.

- 6) Loans of Surplus Funds generated from an incumbent local exchange carrier's non-regulated or non-competitive services are not subject to the requirements of this Part.
- c) All affiliated interest agreements that are subject to the requirements of this Part must be filed with the Illinois Commerce Commission (Commission) for approval pursuant to Sections 7-101 or 7-102 of the Act [220 ILCS 5/7-101 and 5/7-102]. This Part shall not limit the Commission from imposing conditions or waiving certain portions of the rules in its approval of a money pool agreement as it may deem to be in the public interest.

Section 340.20 Definitions

"Act" means the Public Utilities Act [220 ILCS 5].

"Affiliate" has the same meaning as the phrase "affiliated interests" as defined in Section 7-101(2)(ii) [220 ILCS 5/7-101(2)(ii)].

"Credit ratings agency" means Standard & Poor's or its successor, Moody's Investors Service or its successor, or Fitch Ratings or its successor.

"Investment-grade credit issuer" means a company that has the following issuer credit ratings from at least two of the following three major credit rating agencies: BBB- or above by Standard & Poor's or its successor; Baa3 or above by Moody's Investors Service or its successor; or BBB- or above by Fitch Ratings or its successor.

"Committed Credit Facility" means credit lines that permit the person to draw funds from companies that are Investment-grade credit issuers.

"Issuance costs" means any interest, premiums, discounts, commissions, or fees paid in connection with any loans to a party to the money pool agreement.

"Medium-term note" means a note with a maturity of greater than one but no more than ten years.

"Money pool agreement" means any agreement that provides a mechanism for borrowing or lending monies among affiliates repayable on demand or for original terms to maturity of 365 days or less, but excluding routine bank transactions as defined in 83 Ill. Adm. Code 105.10.

"Parent company" means every company owning or holding, directly or indirectly, 10% or more of the voting capital stock of a utility or every company in any chain of successive ownership of 10% or more of voting capital stock.

"Service company" means a mutual or subsidiary service company

approved by the Securities and Exchange Commission pursuant to 17 CFR 250.88.

“Short-term” means one year or less.

“Surplus funds” means funds that are not needed for the immediate short-term cash requirements of the utility.

“Utility” means both public utilities as defined in Section 3-105 of the Act [220 ILCS 5/3-105] and incumbent local exchange carriers that provide noncompetitive services as defined in Section 13-202.5 of the Act [220 ILCS 5/13-202.5], but excluding local exchange telecommunications carriers with no more than 35,000 subscriber access lines pursuant to Section 13-504(d) of the Act [220 ILCS 5/13-504(d)].

Section 340.30 Minimum Requirements for Short-Term Loans from Affiliates to Utilities

Incumbent local exchange carriers shall not be subject to the requirements of this Section pursuant to Section 13-601 of the Act [220 ILCS 5/13-601]. Utilities may borrow funds on a day-to-day basis from affiliates subject to the following restrictions:

- a) The money pool agreement shall set forth a form of promissory note to be used for loans to the utility or shall itself set out the terms of the loans. All short-term loans may be prepaid by the utility without premium or penalty.
- b) No utility shall borrow through or from an affiliate if the utility determines that it can borrow at lower cost directly from banks or other financial institutions or through the sale of its own commercial paper.
- c) Interest. The interest rate on borrowings made by the utility from the affiliate shall not exceed the affiliate’s actual interest cost, including issuance costs, for the funds obtained or used to provide the funds borrowed by the utility.

Section 340.40 Minimum Requirements for Short-Term Loans from Utilities to Affiliates

- a) A utility may borrow from outside the money pool agreement in order to make loans to an affiliate that is a public utility under applicable state law. A utility may not borrow from outside the money pool agreement in order to make loans to non-utility affiliates, except for loans to service companies, a Parent Company and subsidiaries of the utility.
- b) An affiliate shall be eligible for borrowing from the utility if the affiliate meets one of the following five requirements:
 - 1) The affiliate maintains the following commercial paper ratings from at least one of the following three major credit rating agencies: A-2 or above from Standard & Poor’s or its successor; P-2 or above from Moody’s Investors Service or its successor; and F-2 or above from Fitch Ratings or its successor;

- 2) The aggregate amount of outstanding short-term indebtedness of the affiliate, including amounts to be borrowed from the utility, excluding amounts drawn on the committed credit facility, does not exceed the unused balance of funds available to the affiliate under Committed Credit Facilities at any time plus the amount of funds the affiliate invests in the short-term securities described in Section 340.50(a)(2) and (3);
 - 3) The affiliate is an Investment-grade credit issuer or a Service Company;
 - 4) The aggregate amount of funds the affiliate borrows is guaranteed by an affiliate of the utility that meets the requirements set forth in subsection (b)(1); or
 - 5) The aggregate amount of funds the affiliate borrows is guaranteed by an affiliate with a Committed Credit Facility that meets the requirements set forth in subsection (b)(2).
 - 6) The aggregate amount of funds the affiliate borrows is guaranteed by an affiliate of the utility that meets the requirements set forth in subsection (b)(3).
 - 7) The Commission determines that the affiliate has adequate credit capacity or is otherwise financially capable of repaying a loan from the utility notwithstanding the inability to satisfy subsections 1) through 6) above.
- c) The affiliate receiving the loan shall repay the principal amount of the loan, together with all accrued interest, on demand of the utility.
 - d) The utility may lend funds to an affiliate only if (i) the utility cannot earn a higher rate of return on investments of similar risk in the open market, or (ii) the utility will earn no less than the rate the utility would have earned on investments in existing short-term investment accounts maintained by the utility during the period in question.
 - e) Interest. Each affiliate receiving a loan shall accrue interest monthly on the unpaid principal amount of the loan from the date of such loan until the principal amount shall be paid in full.
 - f) Event of default. If an affiliate shall generally not pay its debts as the debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors, or any proceeding shall be instituted by or against an affiliate seeking to adjudicate it as bankrupt or insolvent, then the unpaid principal amount of any loans to such affiliate and all accrued interest shall become immediately due and payable to the utility.

Section 340.50 Investment of Money Pool Funds

- a) Investment of money pool funds shall be restricted to one or more of the following short-term investments:
 - 1) Affiliates that meet the eligibility requirements of Section 340.40(c);
 - 2) Interest-bearing accounts with banks;
 - 3) Obligations issued or guaranteed by the U.S. government or its agencies and instrumentalities, including obligations under repurchase agreements;
 - 4) Obligations issued or guaranteed by any State or political subdivision, provided that these obligations are rated not less than A by Standard & Poor's or its successor, Moody's Investors Service or its successor, or Fitch Ratings or its successor;
 - 5) Commercial paper rated not less than A-1 by Standard & Poor's or its successor, P-1 by Moody's Investors Service or its successor, or F-1 by Fitch Ratings or its successor;
 - 6) Money market funds;
 - 7) Bank certificates of deposit and bankers acceptances;
 - 8) Eurodollar certificates of deposits or time deposits;
 - 9) Medium-term notes, variable rate demand notes and variable rate preferred stock rated A- or above by Standard & Poor's or its successor; A3 or above by Moody's Investors Service or its successor; or A- or above by Fitch Ratings or its successor;
 - 10) Short-term securities rated AA or above by Standard & Poor's or its successor, Aa or above by Moody's Investors Service or its successor, or AA or above by Fitch Ratings or its successor; and
 - 11) Short-term securities issued or guaranteed by an entity rated AA or above by Standard & Poor's or its successor, Aa or above by Moody's Investors Service or its successor, or AA or above by Fitch Ratings or its successor.
 - 12) Repurchase agreements with financial institutions rated AA or above by Standard & Poor's or its successor, Aa or above by Moody's Investors Service or its successor, or AA or above by Fitch Ratings or its successor, with a minimum of 102% over collateralization.
- b) Where money pool funds of a utility are commingled with funds of one or more affiliates under an approved money pool agreement, interest income and other investment income earned on the pool of funds shall be

allocated to the participants that provided funds for the money pool in proportion to the aggregate balance of the pool of funds that each such participant contributed.

- c) This section does not apply to an incumbent local exchange carrier's repayment of a loan from an affiliate.

Section 340.60 Required Filings and Procedures

- a) All filings required by this Section shall be signed and verified under oath by an executive officer having knowledge of the facts and filed with the Office of the Chief Clerk of the Commission in duplicate with a copy provided to the Manager of the Finance Department. Each filing shall state on its face the Docket number of the proceeding authorizing the utility's participation in the money pool agreement.
- b) Documentation of transactions. Utilities shall file a quarterly report documenting transactions with affiliates as specified below. The first report shall be filed within 30 days after the end of the applicable calendar or fiscal quarter in which the order authorizing the agreement is entered or 60 days after the effective date of this Part for filings made pursuant to an agreement entered into before the effective date of this part. Thereafter, reports shall be filed covering the transactions during each successive calendar or fiscal quarter, each report to be filed within 30 days after the end of each quarter. Such written documentation shall include the following:
 - 1) Utilities subject to the requirements of Section 340.30 shall provide the balances of loans outstanding from an affiliate to the utility as of the last day of each month of the calendar or fiscal quarter.
 - 2) Utilities subject to the requirements of Section 340.40 shall provide:
 - A) The net amount of transactions that impact the loan balances;
 - B) Total accrued interest for the applicable quarter;
 - C) The applicable interest rate for each month of the quarter;
 - D) The maturity date of each loan and any renewal dates;
 - E) The qualification of affiliates to borrow from a utility pursuant to Section 340.40(b);
 - 3) Utilities subject to the requirements of Section 340.30 or Section 340.40 shall retain records of all transactions for one year following the filing of the applicable quarterly report, to be made available upon the Commission's request.
- c) The utility shall file a quarterly report listing all of the affiliates with which it can participate in the money pool agreement. An update of the report

shall be filed within ten days after an affiliate which has a direct borrowing relationship with the utility is added to the money pool agreement. The updated reports shall contain a list of all companies involved and indicate which companies have been added and the date those companies entered into the money pool agreement.

- d) The utility shall file a quarterly report of any credit rating downgrades to any affiliate that has borrowed from the utility by a credit ratings agency which results in a credit rating for such affiliate of less than Investment Grade. The quarterly report shall list all of the affiliates which participate in the money pool agreement that have had a credit rating downgrade during the calendar quarter. Each filing shall state on its face the Docket number of the proceeding authorizing the utility's participation in the money pool agreement. Absent further investigation and an order from the Commission, the credit rating agency downgrade will not be deemed a violation of these rules or trigger any requirement to restructure the loan from the utility to the affiliate.
- e) Confidential treatment of filings made pursuant to this Section.
 - 1) For filings made pursuant to a proceeding authorizing the utility's participation in the money pool agreement in which the petition was filed after the effective date of this Part, the filing entity shall include in its petition a request for confidential treatment for any documents for which it desires confidential treatment after the filing of the documents.
 - 2) For filings made pursuant to a money pool agreement entered into before the effective date of this Part, a filing utility seeking confidential treatment of these documents shall file a petition pursuant to 83 Ill. Adm. Code 200.